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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 10  
AD

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Michael Haddad

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Serial No. 75/465,934

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Michael A. Painter of Isaacman, Kaufman & Painter for  
Michael Haddad.

Jay C. Noh, Trademark Examining Attorney, Law Office 110  
(Chris A.F. Pedersen, Managing Attorney).

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Before Simms, Walters and Drost, Administrative Trademark  
Judges.

Opinion by Drost, Administrative Trademark Judge:

On April 10, 1998, Michael Haddad (applicant) filed an  
intent-to-use application to register the mark DINOBRUSH  
for goods identified as toothbrushes in International Class  
21.<sup>1</sup> The examining attorney refused to register the mark  
under Section 2(d) of the Trademark Act because of U.S.  
Registration No. 1,882,766 for the mark DINOPASTE and No.

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<sup>1</sup> Serial no. 75/465,934. On May 24, 1999 (certificate of mailing  
dated May 19, 1999), applicant filed an Amendment to Allege Use.

1,894,519 for the mark DINOPASTE and design. Both registrations are for toothpaste and tooth gel in International Class 3 and are owned by the same entity.<sup>2</sup>

After the examining attorney made the refusal final, this appeal followed. Both applicant and the examining attorney filed briefs. An oral hearing was not requested.

After considering the arguments and papers of both the applicant and the examining attorney, the examining attorney's refusal to register applicant's mark because it is confusingly similar to U.S. Registration Nos. 1,882,766 and 1,894,519 under Section 2(d) of the Trademark Act is affirmed.

Determining whether there is a likelihood of confusion requires application of the factors set forth in In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973). Here, applicant argues that its mark DINOBRUSH creates a different commercial impression from the cited marks DINOPASTE and DINOPASTE and design; that toothbrushes and toothpaste are different goods; and there is a third-party registration that supports the registration of its mark.

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<sup>2</sup> Registration No. 1,882,766 dated March 7, 1995, and Registration No. 1,894,519 dated May 16, 1995. Section 8 and 15 affidavits have been accepted for both registrations.

Not all of the du Pont factors are applicable in every case. In re Dixie Restaurants, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997). Any one of these factors may control in a particular case. Id.; Kellogg Co. Pack'em Enter., 951 F.2d 330, 332, 21 USPQ2d 1142, 1144 (Fed. Cir. 1991).

The first factor to consider is whether the marks are similar in sound, appearance, meaning or commercial impression. du Pont, 476 F.2d at 1361, 177 USPQ at 567. Applicant seeks to register the typed mark DINOBRUSH for toothbrushes. The cited registrations are both for the word DINOPASTE for toothpaste. One cited registration is in typed form; the other includes a design. Both applicant's and registrant's marks contain the same prefix "DINO-". Both add a term that is generic for the goods -- "paste" for DINOPASTE toothpaste and "brush" for DINOBRUSH toothbrushes. "That a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark." In re National Data Corp., 753 F.2d 1056, 224 USPQ 750, 751 (Fed. Cir. 1985). The Federal Circuit went on to find that "CASH MANAGEMENT ACCOUNT and CASH MANAGEMENT EXCHANGE are, in large part, identical in sound and appearance and have a similar cadence." 224 USPQ

at 752. Likewise DINOBRUSH and DINOPASTE are similar in sound and appearance, and they also have a similar meaning in that they refer to dental products with a dinosaur theme. In applicant's case, only the generic terms are different. The term that is common to both the registrations and the application is not alleged to be descriptive, which makes it even more likely that it would be the dominant part of the marks. See also Paula Payne Products v. Johnson Publishing Co., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) (Very close similarity in overall visual and aural impression of the marks SPRAY 'N STAY and SPRAY 'N GLOW).

We next look at whether the goods, toothbrushes and toothpaste, are related. To determine whether the goods and services are related, we must look to the identification of goods and services in the application and registration. Dixie Restaurants, 41 USPQ2d at 1534; Canadian Imperial Bank of Commerce v. Wells Fargo Bank, 811 F.2d 1490, 1493, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987); Paula Payne, 177 USPQ at 77. While applicant argues that the goods are not identical, Du Pont speaks in terms of similar goods not identical goods. Du Pont, 177 USPQ at 567 ("The similarity or dissimilarity and nature of the goods and services as described in the application or registration"). See also

In re Shell Oil Co., 992 F.2d 1204, 26 USPQ 1687 (Fed. Cir. 1992)(Distributorship services in the field of automobile parts related to service station oil and lubrication change services); In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988)(Grocery and general merchandise store services related to furniture). Indeed, the Court of Customs and Patent Appeals has held that toothpaste and toothbrushes are goods of the same descriptive properties and found that there was confusion when the marks LIFEGUARD and LIFEBUOY were used on these products. Lactona, Inc. v. Lever Brothers Co., 144 F.2d 891, 63 USPQ 62, 63 (CCPA 1944). Finally, the examining attorney has submitted evidence that demonstrates that toothpaste and toothbrushes are marketed under the same trademarks from the same source. Thus, toothpaste and toothbrushes are related products, and when similar marks are used on these items, confusion is likely. Consumers familiar with registrant's DINOPASTE toothpaste are likely to conclude that applicant's DINOBRUSH toothbrush comes from the same source.

Applicant raises one further point that merits discussion. The examining attorney cited and later withdrew a registration (No. 2,081,827) for the mark DINO-BUDDIES for, inter alia, toothbrushes. Applicant refers to

this registration and argues that it supports his argument that there is no likelihood of confusion. First, the registration is different from the cited registration. Applicant's and registrant's marks are both for the prefix "DINO-" and a generic dental term "paste" and "brush." The other registered mark is for the term "buddies," which is not generic for toothbrushes. Second, applicant has not made of record the file of the DINO-BUDDIES registration and, thus, we do not know what may have led to the determination that the mark in that case was registrable. Third, every case must be decided on its own record. While third-party registrations may be used to demonstrate that a portion of a mark is suggestive or descriptive, they cannot be used to justify the registration of another confusingly similar registration. In re J.M. Originals, 6 USPQ2d 1393, 1394 (TTAB 1988). Here, the record supports the conclusion that the marks (DINOBRUSH and DINOPASTE) as used on the goods (toothbrushes and toothpaste) are confusingly similar. The single third party registration is simply evidence that the Office considers each case on its own merits.

Decision: The refusal to register is affirmed.